

ARAR PROCESS GUIDE

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U. S. Environmental Protection Agency,
Department of Toxic Substances Control,
State Water Resources Control Board and
Regional Water Quality Control Boards*

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I. INTRODUCTION

This document was prepared to assist Remedial Project Managers, working on cleanup of Superfund sites, select and refine applicable, relevant and appropriate requirements (ARARs) in a timely fashion.

Currently, there is some difficulty in identifying federal and state ARARs, required by the National Contingency Plan (NCP), in sufficient detail to prevent misunderstandings or difference of opinions during preparation of the Remedial Investigation Workplan/Feasibility Report or the Record of Decision (ROD). These differences can result in significant delays finalizing a document and implementing the response action. There are several critical steps which must be taken in order to clarify requirements and reach consensus:

- A. **Timing** - Determination of potential ARARs throughout the NCP process, beginning at the earliest stage possible, usually the RI scoping.
- B. **Critical data needs** - Determine critical data needs to meet these ARARs. If the data needs are not identified early on, significant time may be lost to collect the necessary data to make a determination on how a specific requirement may apply.
- C. **Site/remedy specific application** - Clarify the site/remedy specific application of the requirements. This must be accomplished as soon as possible in the process to reach consensus on compliance with ARARs.
- D. **Acceptance** - Obtain early acceptance by the lead agency and/or the EPA of an ARAR and its applicability.
- E. **Resolve ARAR problems** - Identify and resolve ARAR problems early in the process before it can delay a project or a remedy. This should be handled through informal dispute resolution or formal dispute of an ARAR determination.

A Workgroup was formed consisting of representatives of the U.S. Environmental Protection Agency, Region 9, (EPA) and the California Environmental Protection Agency, consisting of the

Department of Toxic Substances Control (DTSC), the State Water Resources Control Board and Regional Water Quality Control Boards (State and Regional Boards) to document ways to improve the current process and formulate a guidance document for Remedial Project Managers. The Workgroup's aim was to meet the following two objectives with the development of this process guidance:

1. *Prevent time delays caused by ambiguity and disagreements concerning the identification of and compliance with ARARs, and*
2. *Formalize a process for ongoing, active dialogue on ARAR identification throughout the CERCLA process.*

II. USE OF GUIDE

The ARAR Development Process in Section III. provides guidance and should be used to assist the project team in meeting the specific project goals and should be followed as much as possible, while adjustments may be considered to meet individual project needs. In using this guidance the following should be considered:

- A. Follow as close as is reasonably possible. Due to advanced state of many projects, application will need to be tailored to the specific project needs in order to meet the above stated objectives. EPA and the State are committed to implementing this guidance.
- B. EPA and the State recognize that this process guide conforms most closely to the NCP activities conducted at federal NPL sites. Thus, all procedures and timeframes listed in this guide may not conform to site-specific agreements, orders, or processes followed at EPA Fund- or Enforcement-lead sites, or at all federal facility sites for that matter. For instance, the Draft/Draft Final sequence of document production, as well as some timeframes listed, may not apply at all sites. This process guide, however, can still be used as a resource for all other sites.
- C. This process guide, while intended for use primarily at NPL sites, may also be used at non-NPL sites where appropriate, to insure that Federal and State laws are adequately considered in the cleanup process.
- D. This process guide does not specifically address the ARARs process for Removal or

Interim Actions, both of which consider ARARs to some degree. Please refer to the NCP and EPA guidance documents for further information.

- E. Responsibilities in this guide are assigned to the lead and support agencies (see NCP 300.5 for full definitions). The lead agency is most often EPA, or another federal agency (i.e. DOD, DOE) if the site is a federal facility, but can sometimes be the State. Support agencies are most often the State, and EPA (in the case of a federal facility site).

EPA and the State would appreciate feedback on this guide. Comments or questions can be directed to members of the State/EPA ARARs Workgroup listed in the Acknowledgement Section. This guide may be updated in the future.

III. GUIDING PRINCIPLES

- A. Identification of ARARs is critical in developing a response action which meets the requirements and the intent of CERCLA. ARAR identification is therefore a high priority activity and requires a focused effort from the agencies.
- B. ARAR identification and refinement is an iterative process throughout the CERCLA investigation and feasibility study process. (General requirements identified during the scoping phase become more focused and specific as the nature and extent of the problem and the remedial action alternatives are defined.)
- C. Identification of potential ARARs early in the process is necessary in order to determine the minimal data needs required to meet such ARARs and/or to determine if and how certain ARARs apply for specific remedial alternatives.
- D. The process is characterized as an active dialogue between the EPA and the State, and the lead federal agency if it is not EPA. Furthermore, EPA and the State will actively seek agreements on interpretations of potential ARARs.
- E. EPA and the State will provide legal and policy review of potential ARARs early in the identification process and no later than the Draft RI/FS or Draft FS. If the lead is a federal agency other than EPA, EPA and the State will also engage in active dialogue with legal staff from that agency (including initiating such dialogue if necessary).

- F. EPA will notify the State of its position concerning State and Federal ARARs once ARARs have been presented.
- G. EPA and State will notify each other as early as practicable of potential disputes concerning ARARs and work towards preventing formal disputes. (For federal facilities, formal dispute procedures, as described in Federal Facility Agreements (Face), remain available as a last resort to settle differences.)
- H. Significant new information or conditions impacting the protection of public health and/or the environment, may require that ARARs be reassessed, even after a ROD has been finalized.
- I. The State will provide one State position regarding all State ARARs.
- J. The process guide is applicable to individual Operable Units as well as for site-wide RI and FS documents or combined RI/FS documents. Therefore, several ARAR identification processes may occur simultaneously.

IV. ARARs DEVELOPMENT PROCESS

RI/FS¹ Scoping

Lead and support agencies (see NCP §300.5 for definitions) call scoping meeting to discuss potential ARARs/TBCs² and ARARs/TBCs data needs. Potential Location- and Chemical-specific ARARs/TBCs, including data needs, should be discussed. Additionally, the potential remedial action options being considered should be discussed. The lead agency should prepare and distribute minutes of this scoping meeting.

As a result of the scoping meeting, lead agency produces letter identifying potential ARARs/TBCs (noting those agreed to and not agreed to) and ARARs/TBCs data needs. With respect to ARARs/TBCs that are not agreed upon, for which there are data needs, the lead agency shall either agree that the data is needed or make clear that at this time

¹ Applies also to stand alone RI and FS Scoping and Workplans

² 40 CFR 300.430(b)(9), 300.515(h)(2), and 300.400(g)

they do not intend to obtain such data.

EPA and State, and lead federal agency if not EPA, initiate dialogue and meetings to discuss ARARs/TBCs not agreed upon at this stage.

Lead agency must formally request potential ARARs/TBCs from support agency sometime between this scoping stage and the time that site characterization data are available at the RI Report stage. Within 30 working days of receipt of the request, the support agency must send ARARs/TBCs in writing³. The lead and support agency will exchange their respective potential ARARs/TBCs during the Draft RI Report process⁴.

RI/FS⁵ Workplan

Includes section discussing potential ARARs/TBCs and ARARs/TBCs data needs.

Draft RI Report

Presents site characterization data⁶.

Lead agency presents "best shot" at ARARs/TBCs, including discussion of all potential State and Federal ARARs/TBCs identified at scoping stage⁷, and additional ARARs/TBCs data needs.

Support agencies have 10 working days minimum, 15 days maximum to comment on the ARARs/TBCs determinations in either the Draft or Draft Final document, unless a Federal Facility Agreement (FFA), Order, or other Agreement specifies a longer period⁸.

³ 40 CFR 300.515(h)(2)

⁴ 40 CFR 300.430(d)(3)

⁵ Applies also to stand alone RI and FS Scoping and Workplans

⁶ The California Base Closure Environmental Committee has produced a site characterization guidance document entitled, "Recommended Content and Presentation for Reporting Hydrogeologic Data During Site Investigations" (August 5, 1993), which provides useful tips on the preparation of RI Reports for both military and non-military sites.

⁷ 40 CFR 300.430(d)(3)

⁸ 40 CFR 300.515(h)(3)

As discussed in Scoping section, lead agency must have formally requested potential ARARs/TBCs from support agency no later than at the Draft RI Report stage. Once request is made, support agency must send ARARs/TBCs in writing within 30 working days of receipt of the request, unless an FFA, Order, or other Agreement specifies a longer period. Includes request for Action-specific ARARs. Other pertinent advisories, criteria, or TBCs may also be discussed or sent in writing at this time. ARARs/TBCs data needs should also be identified⁹.

If a federal agency other than EPA is the lead agency and does not perform this request for ARARs/TBCs, EPA, or the State in the case of non-NPL federally-owned sites, will write a letter to the agency reminding it of this requirement.

RI Report review and comment, and ARARs/TBCs identification by agencies (following request) will occur concurrently.

Draft Final RI Report

Lead agency will provide a copy of the Draft Final RI Report to the support agencies.

If the support agencies did not have the opportunity to review and comment on ARARs/TBCs determinations during the Draft RI step or if the Draft Final RI Report contains determinations that had not been previously reviewed, the support agencies are allowed to review this report for 10 working days minimum, 15 days maximum, unless an FFA, Order, or other Agreement specifies a longer period¹⁰. To the extent possible, Location- and Chemical-specific ARARs/TBCs should be resolved by this stage in the process.

If the support agencies do not agree with changes made by the lead agency or if the lead agency did not incorporate ARARs/TBCs submitted by the support agencies, the support agencies can enter into informal negotiations with the lead agency, can file a written objection in the administrative record, can object in writing at the Proposed Plan stage, or may have other options under a site-specific FFA, Order, or other Agreement. For instance, under most FFA's, the support agency has 30 days from receipt of the Draft Final RI to informally resolve issues and/or enter into a formal dispute resolution process.

⁹ 40 CFR 300.515(h)(2)

¹⁰ 40 CFR 300.515(h)(3)

FS Scoping

Lead agency calls scoping meeting.

Draft FS Report Outline is discussed, including the remedial alternatives for the FS detailed analysis and potential ARARs/TBCs for each alternative. The lead agency shall prepare and distribute minutes of scoping meeting.

As follow-up to the meeting, the lead agency shall formally request potential ARARs/TBCs from support agency within 30 working days of receipt of the request. This request shall contain the initial screening of the various remedial alternatives with an indication of which the lead agency is going to include in the comparative analysis. The NCP requires this after the initial screening of remedial alternatives has been completed but prior to initiation of the comparative analysis conducted during the detailed analysis phase of the FS¹¹. The lead agency will also exchange the ARARs/TBCs it has identified with the support agency.

If a federal agency other than EPA is the lead agency and does not make this request for ARARs/TBCs, EPA, or the State in the case of non-NPL federally-owned sites, will write a letter to the federal agency reminding it of this requirement and its responsibility to communicate identified ARARs/TBCs to the support agency.

Draft FS Report

Lead agency prepares FS Report which describes Location-, Chemical-, and Action-specific ARARs, potential waivers, TBCs, as well as assesses additional ARARs/TBCs data needs¹².

Agencies have 10 working days minimum, 15 days maximum to comment on the ARARs/TBCs determinations unless an FFA, Order, or other Agreement specifies a longer period¹³.

Agencies review Draft FS Report and ARARs/TBCs determinations concurrently.

¹¹ 40 CFR 300.515(h)(2)

¹² 40 CFR 300.430(e)

¹³ 40 CFR 300.515(h)(3)

Draft Final FS Report

Lead agency will provide a copy of the Draft Final FS Report to the support agencies.

If the support agencies did not have the opportunity to review and comment on ARARs/TBCs determinations during the Draft FS step or if the Draft Final FS Report contains determinations that had not been previously reviewed, the support agencies are allowed to review and comment on the report for 10 working days minimum, 15 days maximum, unless an FFA, Order, or other Agreement specifies a longer period¹⁴.

If the support agencies do not agree with changes made by the lead agency or if the lead agency did not incorporate ARARs/TBCs submitted by the support agencies, the support agencies can enter into informal negotiations with the lead agency, can file a written protest in the administrative record, can object in writing at the Proposed Plan stage, or may have other options under a site-specific FFA, Order, or other Agreement. For instance, under most FFA's, the support agency has 30 days from receipt of the Draft Final RI to informally resolve issues and/or enter into a formal dispute resolution process.

Proposed Plan

Support agency is allowed to review and comment on the proposed plan prior to public release, including ARARs/TBCs determinations and waivers, for 5 working days minimum, 10 days maximum unless an FFA, Order, or other Agreement specifies a longer period¹⁵.

Agencies are allowed to review and comment on the proposed plan for 30 calendar days (60 calendar days maximum upon request from member of the public to lead agency) when it is released for public comment¹⁶. Responses to comments will appear in the Responsiveness Summary, which is contained in the Record of Decision.

Draft ROD

Agencies review and comment on the Draft ROD with the Responsiveness Summary (a

¹⁴ 40 CFR 300.515(h)(3)

¹⁵ 40 CFR 300.515(h)(3) and 300.430(f)(2)

¹⁶ 40 CFR 300.430(f)(3)(i)(C)

summary of and responses to comments received during the proposed plan public comment period) and ARARs/TBCs determinations and waivers for 10 working days minimum, 15 days maximum¹⁷, unless an FFA, Order, or other Agreement specifies a longer period. The Draft ROD should not contain significant changes, particularly in the use of waivers or with respect to ARARs/TBCs determinations, which were not presented to the public.

TBCs become performance standards.

Draft Final ROD

ROD identifies final ARARs/TBCs for the site that the remedy will attain, considering Federal, State, other support agency, and community concerns¹⁸.

If the support agencies did not have the opportunity to review and comment on the Responsiveness Summary or ARARs/TBCs determinations during the Draft ROD step or if the Draft Final ROD Report contains determinations that had not been previously reviewed, the support agencies are allowed to review and comment on the report for 10 working days minimum, 15 days maximum, unless an FFA, Order, or other Agreement specifies a longer period¹⁹.

If the support agencies do not agree with changes made by the lead agency or if the lead agency did not incorporate ARARs/TBCs submitted by the support agencies, the support agencies can enter into informal negotiations with the lead agency, can file a written protest in the administrative record, or may have other options under a site-specific FFA, Order, or other Agreement. For instance, under most FFA's, the support agency has 30 days from receipt of the Draft Final ROD to informally resolve issues and/or enter into a formal dispute resolution process.

Final ROD

Congratulations !!!

¹⁷ 40 CFR 300.515(h)(3)

¹⁸ 40 CFR 300.430(f)(4) and (f)(5)

¹⁹ 40 CFR 300.515(h)(3)

V. SAMPLE FORMAT FOR ARARS PRESENTATION (Attached)

ARARs summaries are commonly presented in table format in addition to narrative language in the document which should provide a more detailed ARAR analysis. It is important to include an analysis of the manner in which the ARAR specifically applies to the remedy and to include the resulting cleanup standard in the table or the narrative text. The attached tables provide an example of an acceptable format for summarizing ARARs. Attached are ARAR tables from the Final Site-wide ROD for Sacramento Army Depot. This ARAR table should be considered for format purposes only (narrative ARAR language concerning this particular ARAR analysis is not included), as an ARAR analysis should be done on a site- and remedy-specific basis. Furthermore, this ARAR table is a living document and is therefore subject to revisions.